

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 14, 2007 Session

BASIL MARCEAUX v. BARRETT PAINTER, ET AL.

Appeal from the Circuit Court for Bradley County
No. V-03-1133 Lawrence H. Puckett, Judge

No. E2006-01444-COA-R3-CV - FILED MAY 24, 2007

Basil Marceaux filed this lawsuit claiming, among other things, that he had the right to dictate what news was published or broadcast by local and national newspapers and television stations. The lawsuit was properly dismissed by the Trial Court. This frivolous appeal from the dismissal of the frivolous lawsuit followed. Several of the defendants request an award of damages pursuant to Tenn. Code Ann. § 27-1-122 for having to defend this frivolous appeal. We affirm the judgment of the Trial Court and remand for a hearing pursuant to Tenn. Code Ann. § 27-1-122 as to those defendants who requested damages for the frivolous appeal.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the
Circuit Court Affirmed; Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Basil Marceaux, pro se Appellant.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, and P. Robin Dixon, Jr., Assistant Attorney General, Nashville, Tennessee, for the Appellee Jerry N. Estes, District Attorney General for Bradley County.

Robert G. Norred, Jr., Chattanooga, Tennessee, for the Appellees Chattanooga Publishing Company (Chattanooga Free Press), Comcast of the South (Comcast), Freedom Broadcasting of Tennessee, Inc. (Channel 9 News), and Sarkes Tarzian, Inc. (Channel 3 News).

Ronald D. Wells, Stacy Lynn Archer, and Matthew L. Dunn, Chattanooga, Tennessee, for the Appellee Danny Hickman.

Timothy L. Mickel and Caroline B. Stefaniak, Chattanooga, Tennessee, for the Appellee Charter Communications, Inc.

Alan D. Johnson and Alfred H. Knight, Nashville, Tennessee, for the Appellees The Tennessean and USA Today.

Barrett T. Painter, Cleveland, Tennessee, for the Appellees Barrett Painter, D. Gary Davis, and Dan Gilley.

MEMORANDUM OPINION¹

This is a pro se lawsuit filed by Basil Marceaux (“Mr. Marceaux”) against numerous defendants. Mr. Marceaux claims, among other things, that the various newspapers and television stations who are defendants should be ordered to publish whatever information Mr. Marceaux deems newsworthy and, if they fail to do so, they should pay monetary damages. Mr. Marceaux’s claims against the non-media defendants are equally as baseless.

The Trial Court dismissed all of the claims filed by Mr. Marceaux after determining that he failed to state a claim upon which relief could be granted. The pleadings filed by Mr. Marceaux fail even to remotely state a claim upon which relief could be granted. To call this lawsuit frivolous would be an understatement. This lawsuit was properly dismissed by the Trial Court. *See* Tenn. R. Civ. P. 12.02(6); *City of Brentwood v. Metro. Bd. of Zoning Appeals*, 149 S.W.3d 49 (Tenn. Ct. App. 2004).

Appellees Danny Hickman and Chattanooga Publishing Company (Chattanooga Free Press), Comcast of the South (Comcast), Freedom Broadcasting of Tennessee, Inc. (Channel 9 News), and Sarkes Tarzian, Inc. (Channel 3 News) request an award for attorney fees pursuant to Tenn. Code Ann. § 27-1-122 (2000), which provides:

When it appears to any reviewing court that the appeal from any court of record was frivolous or taken solely for delay, the court may, either upon motion of a party or of its own motion, award just damages

¹ Rule 10 of the Rules of the Court of Appeals provides: “This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated ‘MEMORANDUM OPINION,’ shall not be published, and shall not be cited or relied on for any reason in any unrelated case.”

against the appellant, which may include but need not be limited to, costs, interest on the judgment, and expenses incurred by the appellee as a result of the appeal.

This entire lawsuit was frivolous as was the appeal of the order of dismissal. We remand this case to the Trial Court for an award of damages pursuant to Tenn. Code Ann. § 27-1-122, including attorney fees incurred on appeal, for those parties identified above who requested such relief in their briefs.

Conclusion

The judgment of the Trial Court is affirmed and this cause is remanded to the Trial Court for collection of the costs below and for an assessment of damages pursuant to Tenn. Code Ann. § 27-1-122. Costs on appeal are taxed to the Appellant, Basil Marceaux, and his surety, if any.

D. MICHAEL SWINEY, JUDGE